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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAJ ABHYANKER

Appeal 2009-004105
Application 09/785,760
Technology Center 3600

Decided: March 26, 2010

Before MURRIEL E. CRAWFORD, ANTON W. FETTING and JOSEPH
A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 4-26 and 28-31. Claims 1-3 and 27 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant claims a system and method for arranging financing and shipping within an e-commerce supply chain environment, and more particularly for aligning financial and logistical flows with an internet exchange portal. (Specification 1:7-9).

Claim 4, reproduced below, is representative of the subject matter on appeal.

4. A method for aligning transactional flows within an internet exchange portal, comprising:
 - facilitating a first auction on the portal for a sale of a good between a buyer and a seller;
 - sending the buyer a shipping form to gather a set of shipping data about shipping the good after the buyer and the seller agree for the sale of the good;
 - collecting the set of shipping data for a contract entered into between the buyer and seller resulting from the sale of the good;

soliciting bids during a second auction on the portal for shipping services for shipping the good as required by the contract; receiving a set of shipping bids; and

selecting a bid from the set of bids according to a predetermined set of bid evaluation criteria.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Huberman	5,826,244	Oct. 20, 1998
Woolston	6,202,051	Mar. 13, 2001
Godin	20010009005	Jul. 19, 2001
Bansel	6,976,005	Dec. 13, 2005

UTU Daily News Digest, "Canada: CN takes equity stake in Freight Wise," "FreightWise," November 14, 2000

The following rejections are before us for review.

The Examiner rejected claims 4-26 and 28-31 under 35 USC § 103(a) as being unpatentable over Godin in view of FreightWise and Huberman.

The Examiner rejected claims 6 and 18 under 35 USC § 103(a) as being unpatentable over Godin in view of FreightWise, Huberman, and Woolston.

ISSUE

Has Appellant shown that the Examiner erred in rejecting claims 4-26 and 28-31 on appeal under 35 USC § 103(a) as being unpatentable over Godin in view of FreightWise and Huberman on the grounds that a person

with ordinary skill in the art would understand that given that Huberman discloses that a singular given process can be configured to conduct multiple auctions contemporaneously, the requirements of the independent claims are met.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Appellant’s Specification does not specifically define the term portal, nor does it utilize the term contrary to its customary meaning. An

ordinary and customary definition of portal is: gate. (<http://www.merriam-webster.com/dictionary/portal>)

2. Examiner found that Huberman “teaches the concept of conducting first and second auctions on the same portal (Col. 18, lines 51- 67).”

(Answer 4-5).

3. Huberman discloses a single broker process that works between a supplier process and a customer process in that:

Once broker process 230 receives the job request from customer process 210a, broker process 230 can hold an auction for the requested document service (step D). At the outset, broker process 230 informs supplier processes 220 acting on behalf of prospective suppliers that an auction will be held for the requested document service (step E). For example, broker process 230 can announce or broadcast the particulars of the job request via network 100. Then, either immediately thereafter or at a time scheduled by the announcement or broadcast, broker process 230 opens the bidding and begins to accept bids from supplier processes 220 (step F). Any or all of supplier processes 220 can participate in the bidding.

(Col. 10, ll. 22-34).

4. Huberman discloses processes 210 or 220 can be configured to conduct multiple auctions contemporaneously. (Col. 18, ll. 35-39).

5. Huberman discloses:

A given real-world entity (individual, business, corporation, etc.) can be a customer in a first auction and a supplier in a second, related auction. This can be advantageous, for example, when a real-world document services provider is to

serve as an example, when a real-world document services provider is to serve as a principal contractor who subcontractors portions of a principal job to other suppliers. The document services provider acts as a supplier with respect to its various subcontractors. It can sell a document service to an end consumer in a first auction, and buy the service or an portion or portions thereof in a second auction (or in a series of additional auctions). The document services provider 210 in the second auction, in which it acts as a customer. Preferably, a given real-world entity does not act as both customer and supplier in the same auction.

(Col. 18, ll. 51-67).

6. The Examiner also took official notice and provided evidence of such notice in the Answer stating "... it is very well known in the art to have a single portal host multiple auctions. To further buttress this assertion, see Bansal et al (US 6976005) at col. 13, lines 13-30." (Answer 9)

7. Bansel (FF 6) discloses at col. 13, lines 13-30 that simultaneous auctions may be run on a single auction web site.

ANALYSIS

We affirm the rejections of claims 4-26, 28-31.

Initially, we note that the Appellant argues independent claims 4, 15 16 and 28 together as a group. Correspondingly, we select representative claim 4 to decide the appeal of these claims, remaining independent claims standing or falling with claim 4.

Appellant does not provide a substantive argument as to the separate patentability of dependent claims 5, 7-14, 17, 19-26, 29-31. Therefore, these

claims fall with the claims from which they depend.

Appellant's main argument against the 35 U.S.C. § 103(a) rejection based on Godin, FeighTwise and Huberman is a perceived deficiency of the combination's failure to disclose "... two different auctions on the same internet exchange portal." (Appeal Br. 14).

The Examiner found that Huberman "teaches the concept of conducting first and second auctions on the same portal (Col. 18, lines 51-67)." (FF 2).

But, Appellant argues that "... nowhere does Huberman teach or even suggest that a same internet exchange portal facilitates two different auctions for both selling goods and shipping the sold goods. Instead, Huberman teaches that buyer and seller at an auction can switch roles in subsequent auctions." (Appeal Br. 14).

We disagree with Appellant. Huberman discloses that a singular given process can be configured to conduct multiple auctions contemporaneously (FF 4, 5). Given this disclosure, we find that the step of a buyer and seller at an auction switching roles in subsequent auctions would occur via the same portal or process, namely, through the single broker process 230 that works as a portal (FF 1) between supplier and customer processes (FF 3).

We are further not persuaded by Appellant's argument that the "first auction facilitates a sale of a good, and a second auction solicits bids for shipping services for the good..." (Appeal Br. 14), because the argument goes to the content of the products being bid on, and not to the process.

Since Huberman discloses relating a first auction and subsequent ones (FF 5), we find that this required process step is met by Huberman. This rationale applies equally to Appellant's arguments on pages 15 and 16 of his Brief directed to differences in the articles being auctioned among the various references used in the 35 U.S.C. § 103(a) rejections, and not to the process being disclosed.

Appellant based their arguments of the rejection of claims 6 and 18 on those presented above, and we thus will sustain the rejection for claims 6 and 18 for the same reason given supra.

CONCLUSIONS OF LAW

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 4-26 and 28-31 under 35 USC § 103(a) as being unpatentable over Godin in view of FreightWise and Huberman.

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 6 and 18 under 35 USC § 103(a) as being unpatentable over Godin in view of FreightWise, Huberman, and Woolston.

DECISION

The decision of the Examiner to reject claims 4-26 and 28-31 is

AFFIRMED.

Appeal 2009-004105
Application 09/785,760

MP

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